

No. 15094

United States
Court of Appeals
for the Ninth Circuit

MILTON GRADY RAMSEY,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Supplemental
Transcript of Record

Appeal from the United States District Court for the
Southern District of California.
Central Division.

FILED

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the United States District Court in and for the
Southern District of California, Central Di-
vision

No. 24515

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MILTON GRADY RAMSEY,

Defendant.

GIVEN INSTRUCTIONS

Government's Instruction No. 1

(Count Two)

The Court is requested to please read Count Two
of the Indictment.

Given:

/s/ H.C.W. [1*]

Government's Instruction No. 2

(The statute which applies to Count Two)

In Count Two of the Indictment the defendant is
charged with a violation of 26 U.S.C. § 5605, which
provides in pertinent part as follows:

“Any person who shall carry on the busi-
ness of a distiller without having given bond
as required by law or who shall engage in or
carry on the business of a distiller with intent
to defraud the United States of the tax on the

spirits distilled by him, or any part thereof,
shall, * * *”

be guilty of an offense.

Given:

/s/ H.C.W. [2]

Government's Instruction No. 3

(The elements which the Government must prove
in Count Two)

In Count Two of the Indictment the Government must prove either that defendant carried on the business of a distiller without having given bond or that defendant carried on the business of a distiller with intent to defraud the United States of the tax.

Given:

/s/ H.C.W. [3]

Government's Instruction No. 4

(The burden of proof in re giving bond.)

In a prosecution for carrying on the business of a distiller without having given bond, defendant has the burden of showing that he executed the bond.

Given:

/s/ H.C.W.

Rossi vs. United States,
289 U.S. 89. [4]

Government's Instruction No. 5
(Count Three)

The Court is requested to please read Count Three of the Indictment.

Given:

/s/ H.C.W. [5]

Government's Instruction No. 6
(The statute which applies to Count Three)

In Count Three of the Indictment the defendant is charged with a violation of 26 U.S.C. § 5603, which provides in pertinent part as follows:

“Every person engaged in * * * the business of a distiller or rectifier, who fails * * * to give notice * * *”

shall be guilty of an offense.

Given:

/s/ H.C.W. [6]

Government's Instruction No. 7
(The elements of Count Three)

The Government must prove in Count Three that defendant engaged in the business of a distiller or rectifier and failed to give notice thereof.

Given:

/s/ H.C.W. [7]

Government's Instruction No. 8
(Count Four)

The Court is requested to please read Count Four of the Indictment.

Given:

/s/ H.C.W. [8]

Government's Instruction No. 9
(The statute which applies to Count Four)

In Count Four of the Indictment the defendant is charged with a violation of 26 U.S.C. § 5691, which provides in pertinent part as follows:

“Any person who shall carry on the business of a brewer, rectifier, wholesale dealer in liquors, (or) retail dealer in liquors * * * and wilfully fails to pay the special tax as required by law, shall, * * *”

be guilty of an offense.

Given:

/s/ H.C.W. [9]

Government's Instruction No. 10
(Carrying on the business)

You are instructed that defendant may be convicted of carrying on the business of a wholesale or retail liquor dealer although there is no proof that he had a barroom or usual appliance of a liquor dealer.

Hood vs. United States,
7 F. 2d 45 (C.C.A. W. Va. 1925).

Evidence of a single sale is sufficient.

Spirits and Wines,

74 F. Supp. 626 (D.C. Minn. 1947);

United States vs. Hughey,

116 F. Supp. 649 (D.C. Ark. 1953).

Given:

/s/ H.C.W. [10]

Government's Instruction No. 11

(Proof of nonpayment of tax)

In the absence of proof to the contrary, there is an inference that the defendant failed to pay the special tax as required by law. The defendant has the burden of showing that the special tax was not paid.

Faraone vs. United States,

259 Fed. 507 (C.C.A. Tenn. 1919).

Given as modified.

/s/ H.C.W. [11]

Government's Instruction No. 12

(Count Five)

The Court is requested to please read Count Five of the Indictment.

Given:

/s/ H.C.W. [12]

Government's Instruction No. 13

(The statute which applies to Count Five)

In Count Five of the Indictment the defendant is charged with a violation of 26 U.S.C. § 5642, which provides in pertinent part as follows:

“Any person who violates any provision of section 5008(b) (that is, any person who possesses, sells or transfers any distilled spirits to which the immediate container thereof has not had affixed thereto in such manner as to be broken on opening the container, a stamp evidencing the tax or * * *”

otherwise indicating compliance with the chapter on Excise Taxes, shall be guilty of an offense.

Given:

/s/ H.C.W. [13]

Government's Instruction No. 14

(The elements of Count Five)

The Government must prove in Count Five (1) that the liquid was distilled spirits; (2) that the distilled spirits were possessed by defendant or sold by defendant or transferred by defendant, and (3) the immediate containers of the distilled spirits did not have affixed thereto a stamp denoting the quantity of distilled spirits contained therein and evidencing payment of all Internal Revenue taxes imposed on such spirits.

Given:

/s/ H.C.W. [14]

Government's Instruction No. 15

(Definition of possession)

The law recognizes two kinds of possession, actual possession and constructive possession. A person who knowingly has direct physical control over a thing is in actual possession of it.

A person who although not in actual possession knowingly has the power to exercise dominion or control over a thing is in constructive possession of it.

If you find from the evidence beyond a reasonable doubt that the accused had actual or constructive possession of the distilled spirits described in the indictment, then you may find that such was in the possession of the accused within the meaning of the word "possession" as used in these instructions.

Given:

/s/ H.C.W.

Based on 14-G of General Instructions. [15]

Government's Instruction No. 16

(Count Six)

The Court is requested to please read Count Six of the Indictment.

Given:

/s/ H.C.W. [16]

Government's Instruction No. 17

(The statute which applies to Count Six)

In Count Six of the Indictment the defendant is

charged with a violation of 26 U.S.C. §5632, which provides in pertinent part as follows:

“* * * Whenever any person removes or aids or abets in the removal of, any distilled spirits on which the tax has not been determined or paid, to a place other than the Internal Revenue warehouse provided by law or conceals or aids in the concealment of any spirits so removed, * * *”

shall be guilty of an offense.

Given:

/s/ H.C.W. [17]

Government's Instruction No. 18

(Elements of the offense)

The Government must prove in Count Six:

- (1) That the liquid was distilled spirits.
- (2) That the tax has not been determined or paid.
- (3) That defendant removed or aided or abetted in the removal of said distilled spirits to a place other than the Internal Revenue warehouse, or that he concealed or aided in the concealment of any spirits so removed.

Given:

/s/ H.C.W. [18]

Defendant's Requested Instruction No. 1

This is a case of circumstantial evidence. Where circumstantial evidence is relied upon to prove the government's case the circumstances must not only

be consistent with guilt but irreconcilable with innocence, or the defendant is entitled to an acquittal.

Given:

/s/ H.C.W. [19]

Defendant's Instruction No. 2

If you have a reasonable doubt as to whether the liquid in the two bottles offered by the government in evidence as Government's Exhibits 1 and 2 came from the premises of the defendant, or from some other place you must acquit the defendant.

Given:

/s/ H.C.W. [20]

Defendant's Instruction No. 3

The burden of proof is upon the government to prove each and every element of its case beyond a reasonable doubt, or the defendant is entitled to an acquittal. With very few exceptions, that burden never shifts to the defendant. He is not required to testify, and his failure to do so raises no presumption against him.

Given:

/s/ H.C.W. [21]

Defendant's Instruction No. 4

Statements which officers claim were made orally by the defendant to them must be viewed with caution, and unless you believe that such statements were actually made you must disregard them.

Given:

/s/ H.C.W. [22]

[Title of District Court and Cause.]

CERTIFICATE BY CLERK

I, John A. Childress, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered 1 to 22, inclusive, contain the original

Instructions given to the Jury;

in the above-entitled case, constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit in the above case.

Witness my hand and seal of the said District Court this 3rd day of October, 1956.

[Seal]

JOHN A. CHILDRESS,
Clerk;

By /s/ CHARLES E. JONES,
Deputy.

[Endorsed]: United States Court of Appeals for the Ninth Circuit. No. 15094. Milton Grady Ramsey, Appellant, vs. United States of America, Appellee. Supplemental Transcript of Record. Upon Appeal from the United States District Court for the Southern District of California, Central Division. Filed October 4, 1956.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

[Title of District Court and Cause.]

DEFENDANT'S INSTRUCTION No. 5

Words used in a law or statute are construed in their ordinary and accepted meaning and use. The word "business" as used in the statute has such a common meaning, being defined by Webster as "mercantile transactions," "a commercial or industrial establishment or enterprise." Unless you find that the defendant was so engaged you must acquit him of the charges of or requiring him to be in the business of a distiller.

Refused:

/s/ H.C.W.

DEFENDANT'S INSTRUCTION No. 6

The corpus delicti of a crime are its essential elements. They must be proved independent of any alleged statements or alleged admissions of the defendant, and before you may consider such alleged statements or alleged admissions. If the government has failed to prove the offenses independent of any such alleged statements or admissions you must acquit the defendant of such offenses.

Refused:

/s/ H.C.W.

[Endorsed]: Filed December 22, 1955, U.S.D.C.

[Endorsed]: Filed November 19, 1956, U.S.C.A.

